IN THE HIGH COURT OF JUDICATURE AT PATNA
FA No.373 of 1992
STATE THRU.COLLECTOR,NAWADAH
Versus
SMT.GIRJA KISHORI DEVI

For the Appellant:- Mr. Anil Kumar Jha, G.A.-2
Mr. G.N. Ojha, J.C. to G.A.-2
For the respondent:- Mr. Uday Shankar Sharan Singh, Advocate

21 21.8.2008 This First Appeal arises out of a judgment and award passed in Land Acquisition case dated 28th June, 1991 arising out of Land Acquisition Case 173 of 1980.

Several land acquisition cases were disposed of by a common judgment and order including the present land acquisition case. The State Government by a notification issued under Section 4 of the Land Acquisition Act decided to acquire a large chunk of land for the purpose of building 'Phulwaria Dam' at Rajauli in the district of Nawada. The lands which are subject matter of this First Appeal appertain to Khata No. 243, Plot No. 230 and measure 94 decimals only. The notification under Section 4 was issued on 1.10.1981 and the Collector awarded a sum of Rs. 12,257.60/- to the respondent as award for the acquisition of the land aforesaid.

The State has filed this appeal on the

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ground that there was no material before the Court to come to a conclusion to enhance the amount of compensation to Rs. 300 per decimal.

On perusal of the order of the Land Acquisition Judge, I find that he has considered the evidence of the respondent witnesses who are D.Ws. 1, 2, 3 and 4. The witnesses have orally stated that the lands which were sought to be acquired were agricultural lands and were used for growing paddy, wheat and other crops. Witnesses have assessd the value of the land under acquisition @ Rs. 500/- per decimal.

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No document or evidence was produced on behalf of the State for the purpose of assessing the value of the land and in the circumstances, the State's submission that the amount awarded was excessive cannot be said to be justified. The Court has fixed the value of the land at Rs. 300/- per decimal on the basis of the fact that in land acquisition case 21 of 1987 which was with respect to acquisition of land for the same project i.e. for the construction of Phulwaria Dam had been allowed at Rs. 300/- per decimal. The contention of

the land holder was that not only do they possess agricultural lands in the village Singar but also have their residential houses in the said village and as such they would be suffering irreparable loss because of the acquisition of the land.

I do not think that the compensation awarded by the Land Acquisition Officer @ Rs. 300/- in the year 1987 under any circumstances considered to be excessive or stupendous as to warrant interference by this Court in this appeal. I may point out that several appeals against the order of the Land Acquisition Judge were pending relating to the acquisition of 'Phulwaria Dam' in this Court, but almost all of them have been dismissed for one reason or the other (not on merit).

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In the circumstances aforesaid I do not see any reason to interfere with the findings of the Land Acquisition Judge, Nawada.

Learned counsel for the respondent has submitted that the respondent is entitled to get the statutory additional compensation as provided under Section 28 of the Land Acquisition Act. I find that the Court has

granted 30% of the market value and has also granted 9% interest on the amount of compensation from the date of possession to the date of deposit of the excess amount in Court. The only complaint of the respondent is that the Court was also bound to grant interest of 15% per annum which has been payable from the date of expiry of the period of one year on the amount of such excess or part thereof which has not been paid in the Court before the date of such expiry. For seeking such a relief the learned counsel for the respondent as relied on a judgment of the Supreme Court reported in 1991 (1) S.C.C. 262 wherein it has been held that the Land holder could claim interest under Section 28 and Section 34 of the Land Acquisition Act in a States Appeal and it was not necessary for the Land holder to file a cross appeal. In the case aforesaid the Land holder's cross objection was in fact dismissed and yet the Supreme Court allowed the appeal on the ground that "procedural hassles cannot come in the way of substantive rights of citizens under the Act."

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In the facts aforesaid the States appeal

is dismissed with an observation that respondent-Land holder will be entitled to 15% interest under Section 28 of the Land Acquisition Act, if it has not already been paid.

This appeal is dismissed with the aforesaid observations.

Sanjay **(Sheema Ali Khan, J.)**

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